

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

|                                                 |                                     |
|-------------------------------------------------|-------------------------------------|
| United States District Court                    | District SOUTHERN DIST. of TEXAS    |
| Name:<br><u>Christopher A. Ramirez</u>          | Case No.:<br><u>4:06-CR-00380-1</u> |
| Place of Confinement:<br><u>U.S.P. Beaumont</u> | Prisoner No.:<br><u>#66213-179</u>  |
| UNITED STATES OF AMERICA                        |                                     |
| Movant (include name under which convicted)     |                                     |
| v.                                              |                                     |

MOTION

**UNITED STATES COURT  
SOUTHERN DISTRICT OF TEXAS  
FILED**

**FEB 10 2014**

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

U.S.D.C for the S.D. of TX

**David J. Swann, Clerk of Court**

(b) Criminal docket number (if you know): 4:06-CR-00380-1

2. Date of the judgment of conviction: \_\_\_\_\_
3. Length of sentence: 151 months as to Count 3/60 months for Count 2-(211 months)
4. Nature of crime (all counts): 18 U.S.C. 922(g)(1) and 924(c)

5. (a) What was your plea? (Check one)

(1) Not guilty ••

(3) Nolo contendere (no contest) ••

(2) Guilty •• **XX**

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_

N/A

N/A

N/A

N/A

N/A

6. Kind of trial: (Check one)

Jury • • Judge only • • **XX**

7. Did you testify at the trial?

Yes • • No • • **N/A**

8. Did you appeal from the judgment of conviction?

Yes **XX** No • •

9. If you did appeal, answer the following:

(a) Name of court: 5th Circuit Court of Appeals

(b) Docket number (if you know): 08-20224

(c) Result: N/A

(d) Date of result (if you know): N/A

(e) Citation to the case (if you know): N/A

(f) Grounds raised: Counsel withdrew as attorney, No new Counsel was appointed

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes • • No **XX**

If "Yes," answer the following:

(1) Docket number (if you know): N/A

(2) Result: N/A

N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

(5) Grounds raised: N/A

N/A

N/A

N/A

N/A

N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes • • No **XX**

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket number (if you know): N/A

(3) Nature of the proceeding: N/A

Cir 2007) (Counsel's failure to object to 16-level increase under U.S.S.G 2L1.2(b)(1)(A)(ii) based on conviction for simple assault was ineffective assistance). Also see United States v. Stricklin, 290 F.3d 748. (5th Cir. 2002) (Attorneys failure to object to District Court's findings that defendant possessed 2,500 milli-liters of P2P was ineffective assistance where evidence at trial showed P2P recovered was not pure, but rather a mixture or substance.

Therefore Mr. Ramirez argues that had his counsel objected to the P.S.I Report and pointed out that they were counting misdemeanors and petty offenses instead of felony convictions, Mr. Ramirez would be in Criminal History Category III with Total Offense Level 29, and would have been exposed to a 108-135 month term of imprisonment instead of erroneously being placed in Criminal History Category VI with Total Offense Level 29, which exposed him to 151-184 term of imprisonment.

Mr. Ramirez request an Evidentiary Hearing, appointment of counsel Prior to determination of whether to grant Mr. Ramirez Habeas Corpus Relief by vacating his sentence and scheduling a resentencing hearing.

#### CONTENTION V.

MR. RAMIREZ REQUEST APPLICATION OF SMARTER SENTENCING ACT ("S.B. 1410")

A bipartisan group of Senators have introduced Senate Bill 1410 ("S.B. 1410"), also known as the "Smarter Sentencing Act of 2014." If the Smarter Sentencing Act is passed, 18 U.S.C. 3553(f)(1) will be amended to allow for Safety Valve to apply

(allowing for a sentence below the mandatory minimum) if a defendant's Criminal History Category is not higher than Category II. See S.B. 1410 Section 2. The Smarter Sentencing act would also make Fair Sentencing Act of 2010 retroactive for certain defendants who were previously convicted of violating 21 U.S.C. 841 or 960 (the penalties for which were modified by Section 2 or Section 3 of the F.S.A.)

Additionally, the Smarter Sentencing Act would modify the Mandatory Minimum Sentences for certain drug offenses as follows:

| STATUE                               | CURRENT MAND. MIN      | NEW MAND. MIN          |
|--------------------------------------|------------------------|------------------------|
| Section 841(b)(1)(a)<br>960(b)(1)(a) | 10 Years               | 5 Years                |
|                                      | 20 Years<br>(Enhanced) | 10 Years<br>(Enhanced) |
| Section 841(b)(1)(b)<br>960(b)(2)(H) | 5 Years                | 2 Years                |
|                                      | 10 Years               | 5 Years                |

S.B. 1410 Section 4. Also, if the Smarter Sentencing act is passed, the Sentencing Commission would be required to review and amend, if appropriate, the sentencing guidelines for drug offenses, so that the guidelines are consistent with the penalties in the Act. S.B. 1410 Section 5.

(4) Grounds raised: \_\_\_\_\_ N/A  
 \_\_\_\_\_ N/A  
 \_\_\_\_\_ N/A  
 \_\_\_\_\_ N/A  
 \_\_\_\_\_ N/A  
 \_\_\_\_\_ N/A  
 \_\_\_\_\_ N/A  
 \_\_\_\_\_ N/A  
 \_\_\_\_\_ N/A

(5) Did you receive a hearing where evidence was given on your motion, petition, application?

Yes •• No ••

(6) Result: \_\_\_\_\_ N/A  
 (7) Date of result (if you know): \_\_\_\_\_ N/A

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: \_\_\_\_\_ N/A  
 (2) Docket number (if you know): \_\_\_\_\_ N/A  
 (3) Nature of the proceeding: \_\_\_\_\_ N/A  
 (4) Grounds raised: \_\_\_\_\_ N/A  
 \_\_\_\_\_ N/A  
 \_\_\_\_\_ N/A  
 \_\_\_\_\_ N/A  
 \_\_\_\_\_ N/A  
 \_\_\_\_\_ N/A

(5) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes •• No ••

(6) Result: \_\_\_\_\_ N/A  
 (7) Date of result (if you know): \_\_\_\_\_ N/A

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes •• No ~~XX~~

(2) Second petition: Yes •• No ~~XX~~

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: \_\_\_\_\_ N/A

\_\_\_\_\_ N/A  
 \_\_\_\_\_ N/A

12. For this motion, state briefly every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. Summarize briefly the facts supporting each ground.

CAUTION: If you fail to set forth all the grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief. Each one is a separate ground for possible relief. You may raise other grounds besides those listed. However, you should raise in this motion all available grounds (relating to this conviction or sentence) on which you base your claim that you are being held in custody unlawfully.

- Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- Conviction obtained by use of coerced confession.
- Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- Conviction obtained by a violation of the privilege against self-incrimination.
- Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- Conviction obtained by a violation of the protection against double jeopardy.
- Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- Denial of effective assistance of counsel.
- Denial of right of appeal.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must set out in the space provided below the facts that support your claims.

GROUND ONE: SEE ATTACHED MOTION

(a) Supporting facts (Do not argue or cite law. Just briefly state the facts that support your claim.): SEE ATTACHED MOTION

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**(b) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes • • No •XX

(2) If you did not raise this issue in your direct appeal, briefly explain why: \_\_\_\_\_

N/A

N/A

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes • • No • •

(2) If your answer to Question (c)(1) is "Yes," state the type of motion, petition, or application, the name and location of the court where the motion or petition was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. \_\_\_\_\_

N/A

N/A

N/A

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes • • No • • N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes • • No • • N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes • • No • • N/A

(6) If your answer to Question (c)(4) is "Yes," state the name and location of the court where the appeal was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. \_\_\_\_\_

N/A

N/A

N/A

N/A

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," briefly explain: \_\_\_\_\_

N/A

N/A

N/A

N/A

N/A

GROUND TWO: \_\_\_\_\_ N / A

\_\_\_\_\_ N / A

(a) Supporting facts (Do not argue or cite law. Just briefly state the facts that support your claim.): \_\_\_\_\_

\_\_\_\_\_ N / A

\_\_\_\_\_ N / A

\_\_\_\_\_ N / A

\_\_\_\_\_ N / A

\_\_\_\_\_ N / A

\_\_\_\_\_ N / A

\_\_\_\_\_ N / A

\_\_\_\_\_ N / A

\_\_\_\_\_ N / A

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes •• No ••

(2) If you did not raise this issue in your direct appeal, briefly explain why: \_\_\_\_\_

\_\_\_\_\_ N / A

\_\_\_\_\_ N / A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes •• No ••

(2) If your answer to Question (c)(1) is "Yes," state the type of motion, petition, or application, the name and location of the court where the motion or petition was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. \_\_\_\_\_

\_\_\_\_\_ N / A

\_\_\_\_\_ N / A

\_\_\_\_\_ N / A

\_\_\_\_\_ N / A

(3) Did you receive a hearing on your motion, petition, or application?

Yes •• No ••

(4) Did you appeal from the denial of your motion, petition, or application?

Yes •• No ••

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes •• No ••

(6) If your answer to Question (c)(4) is "Yes," state the name and location of the court where the appeal was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. \_\_\_\_\_

\_\_\_\_\_ N / A

\_\_\_\_\_ N / A

N/A

N/A

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," briefly explain: \_\_\_\_\_

N/A

N/A

N/A

N/A

**GROUND THREE:** \_\_\_\_\_

N/A

N/A

(a) Supporting facts (Do not argue or cite law. Just briefly state the facts that support your claim.): \_\_\_\_\_

N/A

N/A

N/A

N/A

N/A

N/A

N/A

**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes •• No •• N/A

(2) If you did not raise this issue in your direct appeal, briefly explain why: \_\_\_\_\_

N/A

N/A

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes •• No •• N/A

(2) If your answer to Question (c)(1) is "Yes," state the type of motion, petition, or application, the name and location of the court where the motion or petition was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. \_\_\_\_\_

N/A

N/A

N/A

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes •• No •• N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes • • No • • N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes • • No • • N/A

(6) If your answer to Question (c)(4) is "Yes," state the name and location of the court where the appeal was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available.

N/A

N/A

N/A

N/A

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," briefly explain:

N/A

N/A

N/A

N/A

**GROUND FOUR:**

N/A

N/A

(a) Supporting facts (Do not argue or cite law. Just briefly state the facts that support your claim.):

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

N/A

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes • • No • • N/A

(2) If you did not raise this issue in your direct appeal, briefly explain why:

N/A

N/A

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes • • No • • N/A

(2) If your answer to Question (c)(1) is "Yes," state the type of motion, petition, or application, the name and

location of the court where the motion or petition was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. \_\_\_\_\_

N/A

N/A

N/A

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes •• No •• N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes •• No •• N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes •• No •• N/A

(6) If your answer to Question (c)(4) is "Yes," state the name and location of the court where the appeal was filed, the case number (if you know), the date of the court's decision, and the result. Attach a copy of the court's opinion or order, if available. \_\_\_\_\_

N/A

N/A

N/A

N/A

N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," briefly explain: \_\_\_\_\_

N/A

N/A

N/A

N/A

13. Is there any ground in this motion that has not been presented in some federal court? If so, which ground or grounds have not been presented, and briefly state your reasons for not presenting them: \_\_\_\_\_

N/A

N/A

N/A

N/A

N/A

N/A

N/A

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes •• No •• N/A

If "Yes," state the name and location of the court, the case number, the type of proceeding, and the issues raised. \_\_\_\_\_

N/A

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: James Ray Alston

440 Louisiana Suite 8001 Houston TX 77002

(b) At arraignment and plea: \_\_\_\_\_

(c) At trial: \_\_\_\_\_

(d) At sentencing: \_\_\_\_\_

(e) On appeal: Kevin Dow

Address Unknown

(f) In any post-conviction proceeding: N/A

N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

N/A

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes • No • • N/A

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes • No • • N/A

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes • No • • N/A

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as codified in 28 U.S.C. § 2255 does not bar your motion.\*

**FILED UNDER 28 U.S.C. 2255 (F)(3)**

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as codified in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

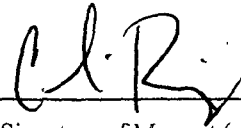
Therefore, movant asks that the Court grant the relief to which he or she may be entitled.

N / A

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on \_\_\_\_\_  
\_\_\_\_\_. (month, date, year).

Executed (signed) on 2-10-14 (date).



Signature of Movant (required)

\* \* \* \* \*

**Model Form for Use in 28 U.S.C. § 2255 Cases**

**Involving a Rule 9 Issue (Abrogated)**

[The advisory committee is developing a new form that makes extensive revisions to the existing form.]